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OFFICE OF PETITIONS

In re Application of :
William F. Reeves :
Application No. 09/583,336 : ON PETITION
Filed: 31 May, 2000 :
For: COMPUTER INSTRUMENTS AND :
EMERGENCY MONITORING DEVICES FOR :
RETRIEVING AND DISPLAYING STORED :
MEDICAL RECORDS FROM BODILY WORN :
DEVICES :

This is a decision on the petition under 37 CFR 1.137(b),¹ filed on 26 June, 2003, to revive the above-identified application. This is also a decision on the request for refund filed on 26 June, 2003.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The petition under 37 CFR 1.137(b) is GRANTED.

The request for refund is GRANTED to the extent indicated.

This application became abandoned on 22 September, 2002, for failure to timely reply to the non-final Office action mailed on 21 June, 2002, which set a three (3)-month shortened statutory period for reply. Petitioner filed a request for an extension of time on 21 November, 2002. The extension of time was improper, however, because no reply to the Office action was filed therewith, and the case therefore became abandoned. A reply was filed on 29 January, 2003. A petition to withdraw the holding of abandonment was dismissed on 19 August, 2003. The filing of the present petition precedes the mailing of Notice of Abandonment.

Petitioner requests a refund of \$400.00 for two \$200.00 extension of time payments. As the two (2) month extension of time received on 29 January, 2003, was filed outside of the extendable period for reply to the non-final Office action mailed on 21 June, 2002, this extension of time is unnecessary and will be refunded. With regards to the payment of \$200.00 filed with the extension of time filed on 20 November, 2002, the payment was inadvertently credited to another application filed by petitioners. The payment has now been credited to the present application. Refund of this extension of time payment is inappropriate, however, because it was timely filed during the extendable period for reply to the non-final Office action mailed on 21 June, 2002.

37 CFR 1.26(a) reads:

(a) The Commissioner may refund any fee paid by mistake or in excess of that required. **A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent or trademark filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee.** The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Commissioner may require such information, or use the banking information on the payment

instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged. (Emphasis added).

Section 607.02 of the Manual of Patent Examining Procedure, Eighth Edition (August 2001) reads, in part, as follows:

Under 35 U.S.C. 42(d) and 37 CFR 1.26, the Office may refund: (1) a fee paid by mistake (e.g., fee paid when no fee is required); or (2) any fee paid in excess of the amount of fee that is required. See *Ex parte Grady*, 59 USPQ 276, 277 (Comm'r Pat. 1943) (the statutory authorization for the refund of fees under the "by mistake" clause is applicable only to a mistake relating to the fee payment). **When an applicant or patentee takes an action "by mistake" (e.g., files an application or maintains a patent in force "by mistake"), the submission of fees required to take that action (e.g., a filing fee submitted with such application or a maintenance fee submitted for such patent) is not a "fee paid by mistake" within the meaning of 35 U.S.C. 42(d).** 37 CFR 1.26(a) also provides that a change of purpose after the payment of a fee, as when a party desires to withdraw the filing of a patent application for which the fee was paid, will not entitle the party to a refund of such fee. (Emphasis added and error corrected).

Accordingly, the request for refund of the \$200.00 filed on 20 November, 2002, is dismissed.

Petitioner has submitted a check for \$650.00 for the petition fee. A Treasury check for \$200.00 will be issued for refund of the untimely extension of time request filed on 29 January, 2003.

The application will be forwarded to Technology Center 3600 for consideration of the reply filed on 29 January, 2003.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.



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